



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-22-00674717-00CL  
& CV-21-00668821-00CL DATE: MAY 23, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: LEGACY LIFESTYLES DESTIN LP et al v. LEGACY LIFESTYLES  
DESTIN PROPERTY LLC et al

&

BERKID INVESTMENTS LIMITED et al v. MILBORNE et al

BEFORE JUSTICE: STEELE

**PARTICIPANT INFORMATION**

For Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Other:

Name of Person Appearing	Name of Party	Contact Info
MICHAEL KATZMAN	Counsel for the Intervenor Investors	mkatzman@katzmanlitigation.com
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GREG ROBERTS	Counsel for the Berkid Investments Limited, plaintiffs on CV-21-00668821-00CL	greg.roberts@roblaw.ca

## **ENDORSEMENT OF JUSTICE STEELE:**

1. This is a motion by the Receiver for an order (i) approving the Receiver's second report and the activities set out therein; (ii) approving the Receiver's interim statement of receipts and disbursements; (iii) approving the fees and disbursements of the Receiver and its counsel; (iv) approving the Sale Process in respect of the Real Properties; and (v) authorizing the redaction of the Confidential Appendices from the Second Report and sealing the Confidential Appendices until the closing of the sale transactions in respect of the Real Properties or further Court Order.
2. The debtor's property primarily consists of 5 Real Properties in Florida.
3. The parties to the proceeding include various creditors who loaned funds on an unsecured basis to the debtors for the purposes of developing senior care facilities on each of the 5 Real Properties.
4. No party opposed. However, Mr. Katzman, counsel to approximately 33 investors, advised that due to the timing of the supplementary materials, he had not had an opportunity to receive instructions from all his clients. Accordingly, he indicated that although he did not expect any opposition from any of his clients, if any of them did oppose he would be moving to set aside the order.

### *Sales Process*

5. The Receiver is obligated to engage a realtor to sell the Real Properties in their current condition, as a condition of the Receiver's financing (as set out in the Term Sheet and the Amendment to Term Sheet).
6. The Receiver reached out to various real estate brokerages and requested proposals to market and sell the Real Properties.
7. The Receivers recommends that the Court authorize it to engage CBRE to move forward with the marketing and selling of the Real Properties. The Receiver states that CBRE is an international real estate brokerage with expertise in selling Florida commercial real estate. At para. 50 of the Receiver's Second Report, the Receiver sets out its reasons for determining that the CBRE proposal was the superior proposal it received.
8. The proposed Sales Process is described in the Second Report at para. 51.
9. The Receiver will return before this Court and the U.S. Court to seek approval of the sale of the Real Properties.
10. The Receiver recommends that the Court approve CBRE and the proposed Sales Process and submits that based on the Receiver's business judgment this is the best path forward. The secured lender supports the proposed process.
11. The Court accepts the Receiver's recommendation and approves the proposed sales process.

### *Request for a Sealing Order*

12. The Receiver seeks an order sealing the Confidential Appendices to the Second Report. These appendices contain appraisals of the real properties. The Receiver's request is that the sealing order be time limited pending closing of the transactions in respect of the real properties or further order of the Court. The Receiver states that the information is commercially sensitive and would prejudice the parties in the event that the information became public prior to the sale of the properties. Further, the

Receiver does not believe that any party will suffer prejudice if the Confidential Appendices are sealed as requested.

13. Subsection 137(2) of the *Courts of Justice Act* provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record. In addition to the jurisdiction under the *Courts of Justice Act*, the Court has the inherent jurisdiction to issue sealing orders: *Fairview Donut Inc. v. The TDL Group Corp.*, 2010 ONSC 789, at para. 34.
14. The requested sealing order is limited in scope (only the Confidential Appendices) and in time (until the sale transactions in respect of the real properties are completed or further court order). The proposed sealing order balances the open court principle and legitimate commercial requirements for confidentiality in the circumstances. In my view, the benefits of the requested sealing order outweigh the negative effects. Importantly, the sealing order will preserve the integrity of the sale process by keeping the appraisal values of the real properties confidential until they are sold. This greatly outweighs any negative effect that may result from temporarily restricting public access to a limited amount of information.
15. I am satisfied that the limited nature and scope of the proposed sealing order is appropriate and satisfies the *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 requirements, as modified in *Sherman Estate v. Donovan*, 2021 SCC 25.
16. The Receiver is directed to provide the sealed Confidential Appendices to the Court clerk at the filing office in an envelope with a copy of this endorsement and the signed order (with the relevant provisions highlighted) so that the confidential appendices can be physically sealed.

#### *Receiver's Fees*

17. The Receiver seeks approval of its fees and disbursements and those of its counsel detailed in the Second Report.
18. The Court is focused on whether the fees and disbursements incurred in carrying out the receivership were fair and reasonable. The following are guidelines the Court may consider:
  - The nature, extent and value of the assets;
  - The complications and difficulties encountered;
  - The degree of assistance provided by the debtor;
  - The time spent;
  - The receiver's knowledge, experience and skill;
  - The diligence and thoroughness displayed;
  - The responsibilities assumed;
  - The results of the receiver's efforts; and
  - The cost of comparable services when performed in a prudent and economical manner:  
*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (Ont. C.A.), at paras. 33 and 45.
19. Fee affidavits were filed. I am satisfied that the fees and disbursements are fair and reasonable in the circumstances.
20. Order to go in the form signed by me today.



